

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

PHILIP C. FROEDER TRS REVOCABLE TRUST
Respondent

Case No.: I-00-70194

FINAL ORDER

I. Introduction

On October 19, 2001, the Government served a Notice of Infraction upon Respondent Philip C. Froeder TRS Revocable Trust alleging a violation of 21 DCMR 700.3, which requires property owners to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on October 18, 2001 at 1803 Swann Street, N.W. and sought a fine of \$1,000.

Respondent filed a timely plea of Deny and I held an evidentiary hearing on January 16, 2002. Gerard Brown, the inspector who issued the Notice of Infraction, appeared on behalf of the Government. Gordon Alt, curator of the property at issue, and Philip Froeder appeared on behalf of Respondent. At the hearing, I granted Respondent's unopposed motion to change its plea to Admit with Explanation. Based upon all the evidence at the hearing, and my evaluation of the credibility of the witnesses, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent owns an apartment house at 1803 Swann Street, N.W. On October 18, 2001, trash in plastic bags was overflowing the trash cans at the property, permitting rats easy access to the food wastes inside the trash bags. The trash cans were located inside a metal enclosure that Respondent had constructed in an effort to prevent persons other than residents of the property from disposing of their trash there and to prevent rats from gaining access to the trash. The enclosure's doors had locks to which the residents of the property had keys. For unexplained reasons, the doors were open when Mr. Brown visited the property on October 18.

Respondent's trash hauler was supposed to pick up the trash twice a week. At the time of the violation, however, the hauler was not honoring its contract and was picking up only once a week. Respondent subsequently terminated the contract and hired another company to provide twice-weekly trash service. Respondent also regularly cleans the trash storage area with ammonia and periodically hires an exterminator to guard against rodent infestation at the building. There is no evidence that Respondent has a history of violations.

III. Conclusions of Law

The rule at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

Respondent's plea of Admit with Explanation establishes that it violated § 700.3 on October 18, 2001. The storage of wastes in uncovered plastic bags provided an accessible food source for rats in violation of the rule.

The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.¹ 16 DCMR 3201. Respondent has presented evidence that justifies mitigating, but not suspending, that fine. In light of Respondent's acceptance of responsibility for the violation, its good faith efforts to prevent violations by constructing the enclosure, its lack of a history of prior violations and its effort to correct the violation by hiring a new trash hauler, the fine will be reduced to \$500.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at

¹ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **1/30/02**

John P. Dean
Administrative Judge